

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

|                                    |   |                                    |
|------------------------------------|---|------------------------------------|
| <b>UNITED STATES OF AMERICA,</b>   | ) |                                    |
|                                    | ) |                                    |
| <b>Plaintiff,</b>                  | ) |                                    |
|                                    | ) | <b>CASE NO. 1:06-CV-00505-CB-C</b> |
| <b>v.</b>                          | ) |                                    |
|                                    | ) |                                    |
| <b>KENNETH M. STABLER, et al.,</b> | ) |                                    |
|                                    | ) |                                    |
| <b>Defendants.</b>                 | ) |                                    |

**ORDER OF SALE FOR THE ONO ISLAND PROPERTY**

Upon review of the record and in accordance with the Amended Order entered by this Court on December 16, 2008 (Doc. 151), adopting the Report and Recommendation of Magistrate Judge William E. Cassady recommending that the parties' settlement agreement be enforced (Doc. 140), and granting the Motion to Enforce Settlement filed by the defendants, Kenneth M. Stabler and Stabler Company, Inc. (Doc. 115), it is hereby **ORDERED** that:

**1.** The United States has valid and subsisting tax liens against *defendant, Kenneth M. Stabler, individually and as nominee of Stabler Company, Inc.*, in the sum of \$579,250 plus interest and any statutory additions thereon, and that the tax liens against *Kenneth M. Stabler* can be foreclosed and the real property described in paragraph 2, below, be sold in its entirety pursuant to Section 2001 of the United States Code, Title 28.

**2.** The federal tax liens encumber certain real property that is located in Baldwin County, Alabama and bears the street address of 29712 Ono Boulevard, Orange Beach, Alabama 36561 ("Ono Island property"), which is more particularly described, as follows:

Lot 58, Ono Island Subdivision, Unit 1, according to the plat thereof of record in the Office of the Judge of Probate of Baldwin County, Alabama, in Map Book 7, Pages 52-54.

3. The Property Appraisal and Liquidation Specialists (“PALS”) are hereby authorized under 28 U.S.C. §§ 2001 and 2002, to offer for sale at public auction, the real property described in paragraph 2, above, with any improvements, buildings and appurtenances thereunto pertaining.

4. The public auction referred to in paragraph 3, above, shall be held on the premises themselves; provided, however, that if, for any reason, the public auction cannot be held at the Ono Island property, it shall be held at another location in Baldwin County and such location shall be identified by PALS in accordance with the terms of the settlement agreement that the parties entered into and announced on the record during the court-ordered settlement conference held on August 20, 2008 and that is evidenced by letter dated September 12, 2008, including attachments (“parties’ settlement agreement”).

5. The times of the public auction referred to in paragraph 3, above, shall be announced by PALS and such auction shall be held only after notice of sale of the Ono Island property is published once a week for four consecutive weeks preceding the date fixed for its sale in a daily newspaper of general circulation in Baldwin County, and by any other notice that PALS in its discretion may deem appropriate.

6. Any rights, title, liens, claims or interests in the Ono Island property described in paragraph 2, above, of all parties to this action and any of their successors, heirs or assigns shall be discharged upon sale of the property and confirmation of the sale, as described in paragraphs 3, above, and 13, below.

7. The minimum bid for the property will be set by PALS, subject to the terms and conditions set forth in the parties’ settlement agreement. If the minimum bid is not met during the public auction referred to in paragraph 3, above, PALS may, without further permission of

this Court, and under the terms and conditions of this decree of foreclosure, hold a new public sale and reduce the minimum bid, or alternatively, sell to the highest bidder.

**8.** The successful bidder(s) shall be required to deposit with PALS at the time of sale, a minimum of twenty (20) percent of his or her bid by certified or cashier's check made payable to the "United States District Court for the Southern District of Alabama." Before being permitted to bid at the sale, bidders shall display to PALS proof that they are able to comply with this requirement. No bids will be received from any person(s) who have not presented proof that, if they are the successful bidder(s), they can make the deposit required by this order of sale.

**9.** The balance of the purchase price for the Ono Island property shall be tendered to PALS by the successful bidder within thirty (30) days following the date of sale in the form of a certified or cashier's check made payable to the "United States District Court for the Southern District of Alabama." In the event that the successful bidder defaults in any deposit requirement or in payment of the balance of the purchase price, the deposit made by the successful bidder shall be forfeited and applied as part of the proceeds of sale, including but not limited to covering any expenses of sale, and the real property shall be re-offered for sale in the same manner as provided herein, or alternatively, sold to the second highest bidder.

**10.** Pending sale of the Ono Island property, PALS is authorized to have free access to the premises and to take any and all actions necessary to preserve the premises, until the deed to the property is delivered to the ultimate purchaser of the property.

**11.** The sale shall be made pursuant to 28 U.S.C. § 2001, and made without right of redemption.

**12.** The sale of the property shall be subject to confirmation by this Court, and upon

confirmation, PALS shall execute and deliver its deed, conveying the Ono Island property to the successful purchaser.

**13.** When the sale is confirmed by this Court, the Register of Deeds of Baldwin County, Alabama shall cause transfer of the Ono Island property to be reflected upon that county's register of title.

**14.** A successful third-party bidder at the sale shall pay, in addition to the amount of the bid, any documentary stamps and Clerk's registry fees as provided by law.

**15.** After the sale is confirmed by this Court, the proceeds therefrom shall be distributed, as follows:

- (a) First, to PALS to cover expenses of the sale, including any expenses incurred to secure or maintain the Ono Island property pending sale and confirmation of the sale by the Court.
- (b) Second, to Baldwin County, Alabama for any matured and unpaid real property taxes for the Ono Island property;
- (c) Third, to Beal Bank, S.S.B. to pay off the balance of its mortgage in full (including interest at the contract rate through the date of distribution and payment of the deficit in the escrow account in the amount of \$20,841.17, but excluding any amounts attributable to attorneys' fees);
- (d) Fourth, to New South Federal Savings Bank to pay off its mortgage in full (including interest at the contract rate through the date of distribution, but excluding any amounts attributable to attorneys' fees);
- (e) Fifth, with regard to the remaining funds, which are referred to herein as the **"Net Sales Proceeds,"** one-half of such Net Sales Proceeds shall be

distributed to Rose Burch Stabler; and

(f) Sixth, the remaining one-half of the Net Sales Proceeds shall be distributed as follows:

- (i) First, to the United States to be applied in payment of the unpaid federal income tax assessments of Kenneth M. Stabler for the tax years 1999, 2000 and 2001 and Stabler Company, Inc. for the tax years 1995, 1998, 1999 and 2000, unpaid federal employment tax assessment of Stabler Company, Inc. for the tax period ended December 31, 1999, and unpaid civil penalty assessment of Stabler Company, Inc. for the tax year 2000; and
- (ii) Second, any funds remaining thereafter shall be distributed to Kenneth M. Stabler.

**16.** Upon sale of the Ono Island property, the respective liens and claims of the parties

to this action shall attach to the sales proceeds to the same extent and in the same order of priority as such liens and claims attached to the property and as is set forth in paragraph 15, above.

**17.** After confirmation of the sale of the Ono Island property, this Court shall enter an appropriate order of distribution directing the Clerk of Court to distribute the sale proceeds in the manner set forth in paragraph 15, above.

**18.** The terms of the parties' settlement agreement is incorporated herein to the extent that any provision contained therein is not expressly set forth in this order.

**19.** The Court shall retain jurisdiction over this cause for the purpose of entering all

further orders as may be appropriate, including without limitation, deficiency and contempt of court judgments, and/or to enforce the parties' settlement agreement if any such further enforcement becomes necessary.

**20.** Each party shall bear their own respective costs, including any attorneys' fees, incurred in connection with this action.

**DONE and ORDERED** this the 6<sup>th</sup> day of January, 2009.

*s/Charles R. Butler, Jr.*

**Senior United States District Judge**